

# EXHIBIT L

Roland Fox

Connecticut v Congo

30th November 2006

IN THE UNITED STATES DISTRICT COURT TEXAS  
FOR THE DISTRICT OF DELAWARE

-----)  
CONNECTICUT BANK OF )  
COMMERCE, )  
Plaintiff )

v. ) Civil Action No.  
          ) 05-726 SLR

THE REPUBLIC OF CONGO )  
Defendant )

CMS NOMEKO CONGO, INC., )  
Garnishee )

-----)  
Deposition of:

MR. ROLAND FOX

taken at the offices of:

Olswang  
90 High Holborn  
London  
WC1V 6XX  
UK

on Thursday, November 30, 2006  
commencing at 9:12 a.m.

**ORIGINAL**

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1	let me just read this again.	02:45:11
2	No, you're right. You're right, thinking about	02:45:21
3	it.	02:45:24
4	Q. What am I right about, because now I've	02:45:24
5	confused myself.	02:45:27
6	A. You're right that what is happening is that	02:45:28
7	those costs are being treated as a deductible cost prior to	02:45:30
8	the calculation of the royalty. That is what this is	02:45:37
9	saying.	02:45:40
10	Q. And what is the effect of treating that -- of	02:45:41
11	treating it as a deductible cost prior to the calculation of	02:45:45
12	the royalty?	02:45:52
13	A. I would imagine that leads to a smaller	02:45:53
14	royalty delivery to the Government.	02:45:56
15	Q. In --	02:45:59
16	A. Could you just give me a second to just try	02:46:00
17	and understand this carefully? Yeah, it would make a minor	02:46:02
18	change to the amount of royalty oil which the Government	02:46:17
19	takes.	02:46:23
20	Q. Is SNPC authorized to sign off on a reduction	02:46:24
21	in the Government oils royalty?	02:46:27
22	A. It hasn't done that. In fact, it's the party	02:46:30
23	that's saying that they consider -- or they're asking that	02:46:33
24	the -- that CMS examine whether that's appropriate or not.	02:46:37
25	Q. Currently this is how the parties are	02:46:42



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1	proceeding though; correct?	02:46:44
2	A. The lifting -- the \$150,000 is a deduction,	02:46:47
3	yes.	02:46:50
4	Q. So the practical effect is that SNPC has	02:46:51
5	signed off on the Government -- on the Government --	02:46:55
6	A. Absolutely not.	02:47:00
7	Q. -- losing a portion?	02:47:01
8	A. Absolutely not.	02:47:03
9	Q. -- of their royalty?	02:47:04
10	A. Absolutely not.	02:47:05
11	Q. Why do you say "absolutely not"?	02:47:07
12	A. Because here SNPC is disputing the right of	02:47:09
13	CMS or asking CMS to consider whether it's appropriate.	02:47:13
14	It's not signing off on it at all.	02:47:16
15	Q. And CMS has done nothing because it's not in	02:47:19
16	their interest to do so; correct?	02:47:21
17	A. That's correct.	02:47:24
18	Q. Just trying to recap. There's an agreement	02:47:52
19	between Congo and CMS with regard to the maritime tax	02:47:55
20	off-set; correct?	02:47:59
21	A. No.	02:48:00
22	Q. I thought we discussed earlier that the	02:48:02
23	maritime tax that CMS indirectly had to pay by virtue of	02:48:04
24	having to pay the shippers, Congo agreed that CMS could take	02:48:13
25	an offtake?	02:48:18

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1	A. No. It's an acquiescence is how I described	02:48:19
2	it.	02:48:23
3	Q. What do you mean by "acquiescence"?	02:48:23
4	A. They've gone along with it.	02:48:26
5	Q. You sought their approval for the	02:48:28
6	acquiescence -- and by "you" I mean CMS?	02:48:30
7	A. Sought their approval? I think -- I don't	02:48:38
8	know whether we -- whether CMS sought the approval or not	02:48:42
9	but it happened. My -- my understanding, from what	02:48:45
10	I learned at the time when this acquisition was made, was	02:48:51
11	that the Government considered or elements of the Government	02:48:56
12	considered -- were objecting to the fact that the	02:49:00
13	Hydrocarbons Ministry was receiving too much money; and this	02:49:04
14	was one way of sharing money around the various ministries,	02:49:07
15	and therefore it was acquiesced in without it being any	02:49:11
16	agreement.	02:49:24
17	Q. Are there any other acquiescences between CMS	02:49:37
18	and Congo, as you call them, that I haven't covered?	02:49:42
19	A. I can't think of any at the moment.	02:49:45
20	Q. Reading through the document request	02:49:58
21	responses -- were you involved in this in the preparation of	02:49:59
22	the document request responses?	02:50:03
23	A. Yes.	02:50:05
24	Q. You reviewed them?	02:50:06
25	A. Yes.	02:50:11



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1	Q. What about the interrogatory responses?	02:50:11
2	A. Yes.	02:50:13
3	Q. And you reviewed those?	02:50:14
4	A. Yes.	02:50:15
5	Q. The request for admissions as well? You	02:50:16
6	reviewed those?	02:50:18
7	A. Yes.	02:50:19
8	Q. The document requests assert a joint defence	02:50:22
9	privilege. Are you familiar with that?	02:50:27
10	A. What it means?	02:50:29
11	Q. Are you familiar with -- well, yes, do you	02:50:31
12	know what it -- what that means?	02:50:35
13	A. Not entirely, no.	02:50:37
14	Q. What's your understanding of the joint defence	02:50:38
15	privilege?	02:50:41
16	A. "Not entirely" is probably a very bad thing to	02:50:42
17	say. I'm not sure what it does mean. I'm not an expert on	02:50:46
18	legal privilege in the US.	02:50:52
19	Q. Okay. That's fair. Are you aware of the	02:50:53
20	basis for that objection? What is the basis for the	02:51:11
21	objection under the joint defence privilege in --	02:51:14
22	A. Could I see the -- where it is actually --	02:51:17
23	Q. I just want to make sure I focus you before	02:51:19
24	I -- before I give it to you. Just give me a second. The	02:51:22
25	copy at page 3, which is where it is asserted, is missing.	02:52:16

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1 Let me see if there's one here. Here we go. I'm just going 02:52:22  
2 to read into the record the General Objection from 02:53:02  
3 Defendant, CMS Nomeco Congo, Inc.'s, Responses to 02:53:07  
4 Plaintiff's First Request for Production. This is on page 2 02:53:12  
5 of the document: 02:53:16  
6 "CMS objects to each document request to the 02:53:17  
7 extent it would require CMS to make or to divulge 02:53:19  
8 information protected by the work product doctrine, the 02:53:30  
9 attorney/client privilege, the joint defence/common interest 02:53:32  
10 privilege and/or any other applicable privilege or 02:53:38  
11 protection. To the extent that CMS objects to any document 02:53:43  
12 request, for reasons other than privilege, CMS Nomeco 02:53:47  
13 objects to any attempt to impose upon it an obligation to 02:53:52  
14 privilege long any documents responsive only to the 02:53:53  
15 objectionable portion of a request until a reasonable time 02:53:57  
16 after CMS Nomeco's other objections may be heard and 02:54:00  
17 resolved. CMS Nomeco will produce a log of other privileged 02:54:07  
18 documents no later than December 31, 2006 and objects, on 02:54:07  
19 relevancy grounds, to any purported requirement that it 02:54:12  
20 produce such log sooner." 02:54:15  
21 And I apologize I don't have the right one with 02:54:23  
22 me. That is -- take on face value that's what's in here, 02:54:26  
23 you guys are free to check when you go back. 02:54:29  
24 With regard to the joint defence common interest 02:54:32  
25 privilege that was asserted, do you know the basis for that 02:54:34

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1	objection?	02:54:38
2	A. No, I'm relying on legal advice I got.	02:54:39
3	Q. You're relying on legal advice for making the	02:54:42
4	objection?	02:54:46
5	A. For -- yes.	02:54:47
6	Q. Do you know if you have a joint defence	02:54:48
7	agreement with Congo, as the defendant in this action -- do	02:54:51
8	you know if you have a joint defence agreement with Congo?	02:54:56
9	A. I don't believe we have, no. In fact we	02:54:59
10	don't; I'm sure we don't.	02:55:02
11	Q. I'm sorry?	02:55:04
12	A. I'm sure we don't.	02:55:05
13	Q. You're sure you don't. Do you know of any	02:55:07
14	other joint defence agreements that CMS Nomeco has with	02:55:09
15	anyone associated with the District of Delaware litigation?	02:55:17
16	A. No, there are none.	02:55:22
17	Q. Is there anyone else that we could ask whether	02:55:31
18	or not there's a joint defence agreement in place, such that	02:55:36
19	this objection would be appropriate?	02:55:40
20	MR. LIPE: I object to the form.	02:55:43
21	A. I don't -- I don't believe there is a joint --	02:55:46
22	there's no agreement between us and anybody else for a joint	02:55:49
23	defence.	02:55:52
24	Q. And you would know because the chief legal	02:55:53
25	officer and --	02:55:56



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1	A. I should know if there was one, yes.	02:55:57
2	MR. KAPLAN: We'll put this on our list of things	02:56:09
3	to discuss after the deposition. Maybe Mr. --	02:56:11
4	MR. LIPE: There are -- there are no joint defence	02:56:15
5	agreements.	02:56:17
6	MR. KAPLAN: Well, what's the basis for the joint	02:56:18
7	defence privilege assertion?	02:56:19
8	MR. LIPE: First of all, we're not claiming joint	02:56:21
9	defence privilege with regard to any documents generated in	02:56:22
10	connection with the Delaware litigation. Did you hear that?	02:56:24
11	MR. KAPLAN: Yes. Yeah.	02:56:29
12	MR. LIPE: Your document requests seek documents	02:56:32
13	relating to the Texas litigation. The joint defence	02:56:34
14	privilege would apply only to the extent the court would	02:56:37
15	determine that communications generated in connection with	02:56:42
16	the Texas garnishment litigation are discoverable in this	02:56:46
17	case. But there is no joint defence agreement with regard	02:56:50
18	to the Texas litigation either.	02:56:54
19	MR. KAPLAN: Who are the agreements -- who are the	02:56:57
20	communications between that are the -- are potentially the	02:56:59
21	subject of the privilege?	02:57:02
22	MR. LIPE: It would be communications	02:57:06
23	Cleary & Gotlieb lawyers and Vinson Elkins lawyers in	02:57:08
24	connection with the Texas litigation.	02:57:17
25	If you look at the first two requests in your	02:57:26

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1 document request, you're seeking documents relating to  
2 litigation brought by Af-Cap and any other judgment  
3 creditors of the Congo without geographic or time  
4 limitation. I interpreted that request as seeking every  
5 communication generated in connection with the Texas  
6 garnishment actions.

7 MR. KAPLAN: I think this general matter -- the  
8 interpretation -- you've broadened the interpretation beyond  
9 what the request asks for.

10 MR. LIPE: I'm glad to hear that. Maybe we don't  
11 have a dispute then. There are no joint defence documents  
12 in connection with the Delaware litigation.

13 MR. KAPLAN: But there --

14 Q. Mr. Fox, were you aware that there were  
15 communications between lawyers for CMS Nomeco and lawyers  
16 for the Congo during the Texas litigation?

17 A. Yes.

18 Q. Did you authorize those communications?

19 A. They were carried out by the lawyers.

20 I believe there were communications with the lawyers acting  
21 for the claimants as well.

22 Q. What's your basis for saying that there were  
23 communications between lawyers acting for the claimants as  
24 well?

25 A. My understanding was that, from time to time,

02:57:30

02:57:34

02:57:38

02:57:41

02:57:46

02:57:51

02:57:53

02:57:55

02:58:05

02:58:07

02:58:10

02:58:13

02:58:17

02:58:19

02:58:22

02:58:27

02:58:31

02:58:32

02:58:34

02:58:52

02:58:57

02:59:08

02:59:11

02:59:14

02:59:15



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1	<b>Mr. Lipe had spoken to lawyers for the claimants to discuss</b>	02:59:20
2	<b>hearings. That's my understanding.</b>	02:59:25
3	MR. LIPE: Just so there's no confusion, we're not	02:59:35
4	claiming those as privileged, if that's what you're	02:59:37
5	concerned about. I don't think you asked about	02:59:41
6	communications with claimant's lawyers claimed as privilege.	02:59:45
7	That's not the case.	02:59:48
8	MR. KAPLAN: I'm not.	02:59:50
9	Q. Are there any other understandings between	03:00:04
10	CMS, Congo or SNPC, other than those which we've discussed	03:00:09
11	today?	03:00:17
12	A. I can't recollect any.	03:00:17
13	Q. CMS is currently extracting oil under the	03:00:26
14	Marine 1 permit?	03:00:29
15	A. Is currently?	03:00:32
16	Q. Currently extracting oil under the Marine 1	03:00:33
17	permit?	03:00:36
18	A. Correct.	03:00:37
19	Q. Has there ever been a period of time during	03:00:38
20	which -- after the wells were drilled that CMS hasn't	03:00:42
21	extracted oil from the field?	03:00:49
22	MR. LIPE: I object to the form.	03:00:52
23	A. Well CMS were the operator of the Marine 1	03:00:53
24	permit. At some stage after the wells were drilled	03:00:59
25	I suspect they must have been shut in. And, subsequently,	03:01:03

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1 **when the necessary terminal facilities were prepared then**  
2 **extraction would have started. There may well have been**  
3 **interruptions for production difficulties or the like.**

4 Q. But there have been --

5 A. But overall the production has continued since  
6 1991.

7 Q. Okay. When was the last royalty lifting  
8 taken?

9 A. The last royalty lifting was taken in April of  
10 2006. It was more than a royalty lifting, of course,  
11 because SNPC's working interest oil was also lifted at the  
12 time.

13 Q. Does SNPC always take its interest oil in  
14 a lifting at the same time it takes the Congo's royalty  
15 lifting?

16 A. Yes. I believe it's obliged that the two  
17 things happen simultaneously, as on the date on which these  
18 liftings began in kind rather than there being a cash  
19 royalty.

20 Q. And when is the next royalty due?

21 A. The next -- we understand that SNPC -- well,  
22 SNPC is entitled to take the next lifting. We forecast it,  
23 at the moment, some time around the end of December, but  
24 SNPC has not nominated a date as yet. It is entitled to the  
25 next lifting then, assuming, of course, that it complies

03:01:06  
03:01:10  
03:01:14  
03:01:17  
03:01:19  
03:01:23  
03:01:26  
03:01:34  
03:01:39  
03:01:42  
03:01:54  
03:01:58  
03:02:01  
03:02:07  
03:02:12  
03:02:13  
03:02:15  
03:02:21  
03:02:24  
03:02:25  
03:02:33  
03:02:35  
03:02:40  
03:02:44  
03:02:50

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1	<b>with the requirements for nomination.</b>	03:03:02
2	Q. And are you aware of when the lawsuit we're	03:03:04
3	here about today began? Do you know the date?	03:03:07
4	A. I believe it's October 2005.	03:03:11
5	Q. Well, do you know when -- when the lawsuit	03:03:15
6	actually began?	03:03:19
7	A. October 2005.	03:03:19
8	Q. Are you aware that CMS was served with	03:03:24
9	Af-Cap's request for garnishment writs in this action at the	03:03:29
10	end of August of 2005?	03:03:33
11	A. I thought the writ was October. I may be	03:03:41
12	wrong, but I thought it was October. That was my	03:03:43
13	recollection. I suspect you're probably right.	03:03:45
14	Q. Are you aware that writs of garnishment were	03:03:53
15	ordered in this case on September 30th, 2005?	03:03:56
16	MR. LIPE: I object to the form.	03:03:59
17	A. No. I thought it was some time in October.	03:04:01
18	I'm sure we were served in October.	03:04:04
19	Q. Then you'll agree with me on October 12th,	03:04:07
20	2005 writs of garnishment were served on CMS in this case?	03:04:09
21	MR. LIPE: I object to the form.	03:04:14
22	A. Was it writs or --? I don't know. Who did	03:04:16
23	you serve them on? Sorry, I'm not supposed to ask	03:04:19
24	questions. I'm not sure whether they were served on CMS or	03:04:22
25	not.	03:04:26



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1	Q. That's fine. They were served	03:04:28
2	on October 12th, 2005 on CMS corporate representative in	03:04:30
3	Delaware. Were you aware of that?	03:04:34
4	MR. LIPE: I object to the form.	03:04:37
5	A. I was aware there was a writ issued on or	03:04:39
6	served on 12th October. Whether it was validly served or	03:04:44
7	not I'm not in a position to answer because that's a matter	03:04:48
8	of US law.	03:04:52
9	Q. And it's correct that the writ hasn't been	03:04:59
10	dismissed?	03:05:02
11	A. It has not been dismissed. Indeed, I'm not	03:05:04
12	even sure it was validly issued, but that's a matter, again,	03:05:19
13	of US law.	03:05:23
14	Q. I show you Exhibit 13.	03:05:24
15	(Exhibit 13 marked for identification).	03:05:27
16	Q. Have you seen this document before?	03:05:48
17	A. Yes.	03:05:50
18	Q. What is this document?	03:05:55
19	A. It's a document sent by CMS to the Congo	03:05:56
20	showing statistics of production and barrels lifted	03:05:59
21	in October. It contains also a list of the -- contains also	03:06:05
22	a schedule of the under/over lifts and various other items.	03:06:12
23	Q. And this is statistics for October 2005?	03:06:21
24	A. It talks here about the production that was	03:06:26
25	commercializable in October 2005 --	03:06:31

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1	Q. And what is --	03:06:40
2	A. -- and the volume of oil that had been lifted	03:06:42
3	in October 2005 which, as you can see, was zero.	03:06:44
4	Q. What does "Production commercialisable" mean?	03:06:56
5	A. It's the total production less the production	03:07:01
6	that had been utilized in production operations, in --	03:07:03
7	during the relevant period.	03:07:11
8	Q. You said this reflects that there was no	03:07:21
9	lifting taken?	03:07:23
10	A. Correct.	03:07:24
11	Q. And why would no lifting have been taken?	03:07:25
12	A. Because there wasn't sufficient oil in the	03:07:27
13	conkouati to make a lifting sensible.	03:07:30
14	Q. And these statistics for October 2005, which	03:07:34
15	is the same month that the garnishment was served; correct?	03:07:41
16	A. Correct.	03:07:45
17	Q. Item 3 --	03:07:46
18	A. Hmm.	03:07:49
19	Q. -- on page 1575, which is page 1 --	03:07:49
20	A. Hmm.	03:07:54
21	Q. -- what is "Redevance comptabilisTe" mean?	03:07:54
22	A. This is the calculations -- the	03:08:02
23	computations -- it is described in the documentation of the	03:08:03
24	royalty -- that will otherwise or that will eventually	03:08:07
25	become taken by way of barrels of oil at the time that SNPC	03:08:10



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1	Q. Okay. What is Nuevo Congo and Nuevo Congo	03:14:31
2	Limited share?	03:14:36
3	A. 16.67%.	03:14:37
4	Q. 16?	03:14:40
5	A. .67%.	03:14:42
6	Q. Just so I'm clear about this, and so the	03:14:44
7	record is clear, the number on page 1 of this document,	03:14:47
8	document -- Exhibit 13, is a calculation which takes into	03:14:50
9	account the royalty for each of the working interest owners	03:14:54
10	proportionately that would be due to the Congo?	03:14:59
11	A. It -- yes, it's a combination of all the	03:15:02
12	royalties that are ultimately taken.	03:15:05
13	Q. It's Nuevo's Congo 16.67%, it is Nuevo's Congo	03:15:07
14	Limited, CMS Nomeco's percentage and SNPC's percentage,	03:15:15
15	which was 14.5%; right?	03:15:20
16	A. That is correct, yes.	03:15:23
17	Q. And who is Mr. Faillenet?	03:15:24
18	A. He's the General Manager in Congo.	03:15:28
19	Q. And he's responsible for preparing these	03:15:32
20	documents?	03:15:34
21	A. I believe they will be prepared by the	03:15:35
22	accountant in Congo and signed off by Eric Faillenet.	03:15:37
23	Q. Can you give me the name of the accountant?	03:15:45
24	A. Arnaud Le Blanc -- A-r-n-a-u-d, new word L-e,	03:15:49
25	new word B-l-a-n-c.	03:15:55

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1 Q. And is page 1 a summary of the underlying 03:16:05  
2 documents attached to Exhibit 13? 03:16:08  
3 A. I mean, a summary -- I summary of certain 03:16:11  
4 elements of it, yes. 03:16:14  
5 Q. Okay. And what is page 2 telling us? 03:16:15  
6 A. It's -- it's a -- it's a list of the net 03:16:18  
7 production or the real production, sorry, compared to what 03:16:24  
8 had been provisioned. So it's an updated list of how much 03:16:28  
9 off the estimates the production actually was. 03:16:34  
10 Q. Okay. And page 3 is a pricing schedule? 03:16:37  
11 A. Yes, the oil that's produced isn't normal 03:16:43  
12 crude oil, it is number 6 fuel oil; and this is the prices 03:16:46  
13 at which number 6 fuel oil is sold. 03:16:51  
14 Q. On page 1578, what are these diagrams? What 03:17:08  
15 are these? 03:17:12  
16 A. They're a list of the oil in storage -- the 03:17:13  
17 oil actually on the konkouati. It talks about, for 03:17:18  
18 instance, what the API is, its quality, effectively. Some 03:17:21  
19 oil is wet oil, some is condensate, and this is just 03:17:26  
20 comparing the inventory, the various items. 03:17:32  
21 Q. And there's an opening stock/closing stock, is 03:17:37  
22 that -- what does that relate to? 03:17:40  
23 A. That would represent the amount on the tanker 03:17:42  
24 at the beginning of the period and at the end. 03:17:44  
25 Q. And then there on 1579. Is this an updated -- 03:17:46

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1	<b>A. Over/under lift statement.</b>	03:17:55
2	Q. Over/under?	03:17:56
3	<b>A. Yes.</b>	03:17:58
4	Q. Okay. And the shaded portions of the	03:17:58
5	under/over, are those -- do they represent the SNPC royalty	03:18:01
6	lifting -- the SNPC/JOA portion as well as the royalty	03:18:09
7	lifting?	03:18:14
8	<b>A. Correct.</b>	03:18:14
9	Q. And then if you look at -- if we look at the	03:18:21
10	one from 26th November 2000 -- let's look	03:18:25
11	at September 7th --	03:18:36
12	<b>A. What's the lifting number on the left? It is</b>	03:18:38
13	<b>the second column in.</b>	03:18:40
14	Q. 130. We'll look at number 130.	03:18:43
15	<b>A. Right. Okay.</b>	03:18:45
16	Q. This would be a CMS lifting; correct?	03:18:46
17	<b>A. Yes.</b>	03:18:50
18	Q. Okay. And it was 435,000 barrels?	03:18:50
19	<b>A. Correct.</b>	03:18:57
20	Q. How was the selling price represented?	03:18:59
21	<b>A. It's the \$43.9038.</b>	03:19:02
22	Q. Okay. Okay. So I can calculate how much you	03:19:08
23	sold the oil for if I multiplied the number of barrels by	03:19:14
24	that amount of dollars?	03:19:20
25	<b>A. Exactly, yes.</b>	03:19:22



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1	Q. And then there's a notation here for 130	03:19:23
2	royalty in the activities column?	03:19:30
3	A. Yes.	03:19:32
4	Q. What does that mean?	03:19:32
5	A. That's the computation of the royalty that	03:19:33
6	will become taken by the Government at the time of the next	03:19:39
7	SNPC lifting.	03:19:45
8	Q. So CMS is keeping a running tally --	03:19:46
9	A. Of what will ultimately become taken by the	03:19:49
10	Government, yes.	03:19:52
11	Q. And then this reference to tax maritime?	03:19:55
12	A. Yes.	03:20:00
13	Q. Lift 130. What -- what is that?	03:20:00
14	A. That's the issue that we've discussed earlier	03:20:04
15	on, the off-set.	03:20:06
16	Q. And by that you mean the off-set?	03:20:08
17	A. Yes.	03:20:09
18	Q. And what -- so it's -- is that a negative	03:20:10
19	number?	03:20:13
20	A. Yes, it's a -- I mean, it's a -- it was	03:20:14
21	a charge that, as I've explained before, has been met by	03:20:19
22	CMS; it's compensated its lifters and it's been -- CMS has	03:20:24
23	then deducted a barrel equivalent of that value in the	03:20:31
24	calculation of the Government's entitlement.	03:20:36
25	Q. And then is that based on an actual number	03:20:41